



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Wm. J. Lawson
Secretary of State
Austin, Texas

Dear Sir:

Attention: Mr. Will Mann Richardson

Opinion No. 9-5254

Re: Whether or not the Secretary of State is authorized to grant an extension of the corporate existence of a mutual assessment insurance association under Articles 1315 (a) and (b), Vernon's Texas Civil Statutes.

This will acknowledge receipt of your letter of March 7, 1941, in which you seek an opinion of this department on the above captioned question. Your letter of request reads:

"The Texas Independence Life Insurance Company has applied to us for a renewal of its charter under the provisions of Article 1315 (a) and 1315 (b). In view of the fact that this is a state-wide mutual assessment insurance association, it could not now be granted a charter by this Department.

"Article 4639f of the Revised Civil Statutes provides that those corporations which had been granted a charter by the Secretary of State could comply with the requirements of the Insurance Department and by doing so, according to Section 15 of that article, their charters 'are expressly continued in force during the terms of said charters'. That act was passed in 1933. In 1933, Article 1315 (a) and (b) was passed providing that the Secretary of State could extend the corporate existence of a company incorporated for any purpose authorized 'under this title'. This act also

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provides that the filing fee to be paid shall be such fee as the corporation would be required to pay if it were applying for a new charter. The act also requires that the Secretary of State find that the corporation is solvent and its capital unimpaired. In this case, the Secretary of State could not now grant a charter to a state-wide mutual insurance company and we could not find that its capital is unimpaired, as it has no capital stock.

"In view of these facts, we wish to request an opinion from your Department as to whether the Secretary of State is authorized to grant an extension of the corporate existence of a mutual assessment insurance association under Article 1315 (a) and (b)."

The facts disclosed in the affidavit of Mr. A. B. Brannen, Secretary of Texas Independence Life Insurance Company, which accompanies your letter of inquiry, show that Texas Independence Life Insurance Company was incorporated for a term of 49 years from the 9th day of January, A. D. 1892. Thus it is seen that the charter of such company expired by operation of law on the 8th day of January, 1941.

The 43rd Legislature passed House Bill No. 303, now known as Chapter 8a, Title 78 of the Revised Civil Statutes, which was designed to place all corporations doing an insurance business not then under the supervision of the Insurance Department by virtue of a pertinent statute under their supervision.

It was provided in such bill, now Section 1 of Article 4859f:

"Sec. 1. Any corporation organized and incorporated under a pre-existing law in this State without capital stock and not for profit, which law has been amended or repealed or re-enacted, and which was operating and actually carrying on in this State immediately prior to January 1, 1933, the state-wide business of mutually protecting or insuring the lives of its members by assessments made upon its members may comply with the terms of this Act, subject to the subsequent provisions hereof."

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Section 2 of such article provides that any corporation described in Section 1 thereof could avail itself of the rights and privileges conferred by such law conditioned that they did so within six months after the effective date of the act.

The Texas Independence Life Insurance Company did avail itself of the privileges conferred by such law and has since operated under and has been known and commonly referred to as a 303 company.

It was the legislative intention as expressed in House Bill 303 to expressly repeal all charters of insurance companies then in existence which failed or refused to qualify thereunder with, of course, exception of those qualified under other pertinent statutes. Section 14 thereof provided in part:

" The charter of each corporation in this State entitled to comply with the terms of this Act which does not make application to do so within six (6) months after the Act shall go into effect is hereby expressly repealed and revoked, and such corporation is hereafter forever prohibited from carrying on its business in this State. It is the expressed intent of this section and this Act to revoke, repeal and cancel the charter of every corporation, dormant, or otherwise, exempt from the insurance laws of this State by Article 2971a, Revised Statutes 1879, and Articles 3096 and 3096w, Revised Statutes of 1895, which fails to comply with the terms of this Act. . . ." (Underscoring ours)

Thus it is seen that the legislative intention relative to such corporations is plainly, intelligently and unmistakably expressed. They provided, as they were required to do, that the charters of all corporations qualifying thereunder were to be "expressly continued in force during the terms of said charters" (Underscoring ours). They could not have repealed the existing charters without offering them opportunity to qualify under the regulatory law. See New Orleans Waterworks Company v. Rivers, Louisiana, 115 U. S. 74, 29 L. Ed. 525. The Legislature did not then provide that the charters of those corporations qualifying were to be

thereafter renewed or extended. Statutory authority for renewing and extending such charters was not then existent and was nowhere provided for at that time. If such authority now exists it is by reason of Articles 1315 (a) and (b) passed at the Regular and First Called Sessions respectively of the 45th Legislature. Article 1315 (a) reads:

"Subject to a finding by the Secretary of State as hereinafter provided, any private corporation organized or incorporated for any purpose or purposes authorized under this Title, at any time within ten (10) years prior to the expiration of its charter, or any extension thereof, may extend such charter and the corporate existence of such corporation for an additional period of not to exceed fifty (50) years from the expiration date of the original charter, or any extension thereof, with all the privileges, powers, immunities, right of succession by its corporate name, and rights of property, real and personal, exercised and held by it at such expiration date, to the same intents and purposes as upon original incorporation. The manner of extending any such charter shall be by a resolution in writing, adopted at any annual or special meeting of stockholders called for that purpose by stockholders holding a majority of the shares of capital stock of such corporation then outstanding, such resolution to specify the period of time for which the charter is extended, and a copy of such resolution, duly certified by the secretary of the corporation, under the corporate seal, shall be filed and recorded in the office of the Secretary of State. Upon the adoption of such resolution and the filing of a certified copy thereof with the Secretary of State, together with payment of the filing fee herein prescribed, the charter and corporate existence of such corporation may be extended for the additional period of time recited in such resolution. The filing fee to be paid for any such extension of a charter shall be such fee as said corporation would be required under the Statutes of Texas

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to pay in the event it was then applying for a new charter instead of extending its then existing charter.

"Such extensions, however, may be made only in instances where the Secretary of State shall have found, after proper investigation, that such corporation is solvent and its capital unimpaired."

Article 1315 (b) reads:

"The provisions of Article 1315(a) shall extend to and include all private corporations incorporated under the general laws of Texas. The period of ten (10) years prior to the expiration of the charter or any extension thereof referred to in Article 1315(a) shall include the period of time during which such corporation may have continued its existence under the provisions of Article 1389 of the Revised Civil Statutes of 1925."

The settled rule of construction of grants by the Legislature to corporations whether public or private, is that only such powers and rights can be exercised under them as are clearly comprehended in the words of the act or derived therefrom by necessary implication. Any ambiguity or doubt arising out of the terms used by the Legislature must be resolved in favor of the public. Sutherland on Statutory Construction, p. 489, citing: Petersburg v. Metzger, 21 Ill. 205; Stetson v. Kempton, 13 Mass. 272; Waxahachie v. Brown, 67 Tex. 519, and other authorities too numerous for citation herein.

This rule of strict construction is discussed at great length in Thompson on Corporations, Vol. 1, p. 397, wherein he discussed and quotes from the case of Packer v. Sunberry & Co. R. Co., 19 Pac. St. 211, as follows:

"But to justify a strict construction it is not necessary to consider the nature and circumstances of the particular law before us, for it belongs to a class of statutes which, by a long established and well defined rule of interpretation in all the states of the Union,

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as well as in England, must receive and uniformly have received the strictest possible construction. All acts of incorporation and acts extending the privilege of incorporated bodies, are to be taken most strongly against the company. Whatever is not expressly and unequivocally granted in such acts is taken to have been withheld. (Underscoring ours)

Applying the above rules of construction to Article 1315 (a) and (b), can it be urged that there is no doubt but that such grant of authority is extended to the Texas Independence Life Insurance Company and others similarly situated? Article 1315 (a) expressly provides that the resolution to extend the corporate life must be ". . . adopted at any annual or special meeting of stockholders . . . by stockholders holding a majority of the shares of capital stock . . ." (Underscoring ours.) It is further provided that "such extensions, however, may be made only in instances where the Secretary of State shall have found . . . the corporation solvent and its capital unimpaired." Since there are no stockholders in a mutual life insurance company to pass the resolution required, and since such corporation was created without capital stock and presumably as a non-profit corporation the required findings of the Secretary of State are rendered impossible of performance.

Although the wording of Article 1315 (b) is apparently broad enough to cover all corporations, it is our opinion that Article 1315 (a) and (b) considered together, were not intended to and do not encompass the type of corporation involved in this opinion request. It necessarily follows that your request is answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAR 28, 1941

Griffith Mann

ATTORNEY GENERAL OF TEXAS

By

Lloyd Armstrong

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Assistant

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